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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/650,709	05/20/96	ALBIN	D 7693-002-0

022850 QM12/0117
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EXAMINER	
DEXTER, C	
ART UNIT	**PAPER NUMBER**
3724	36

DATE MAILED: 01/17/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.	Applicant(s)
08/650,709	Albin et al.
Examiner	**Group Art Unit**
Clark F. Dexter	3724

☒ Responsive to communication(s) filed on *Nov 7, 2000*.

☐ This action is **FINAL.**

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire *3* month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) *2, 12, 13, 17-19, 21, 22, 26, and 27* is/are pending in the application.

Of the above, claim(s) *2, 12, 13, and 18* is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) *17, 19, 21, 22, 26, and 27* is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☒ The proposed drawing correction, filed on *Mar 22, 2000* is ☐approved ☒disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☒ None of the CERTIFIED copies of the priority documents have been

☒ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

DETAILED ACTION

1. The amendment filed November 7, 2000 has been entered. Further, the Appeal Brief filed November 7, 2000 has been received. Upon further consideration, particularly of applicant's remarks, it is necessary to raise additional issues as well as request further clarification on current issues. Further, new grounds of rejection are necessitated in view of the newly discovered references to Leeper et al. and Anetsberger. The new grounds of rejection, including the rejections based on the newly cited references, follow. It is noted that the rejections based on Johnson et al. have been withdrawn.

Drawings

2. The drawings stand objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "depressions" as set forth in claim 27 must be shown or the feature(s) cancelled from the claim(s). No new matter should be entered. It is noted that the addition of new Figure 5 stands as being **disapproved** because, as previously stated in paragraph 5 of paper #28, applicants did not provide a basis in the original disclosure for the specific configuration of the back-up roll notches or did not state that such a back-up roll configuration is old and well known in the art. Thus, applicant must either provide a basis found in the original disclosure for the specific back-up roll notch configuration or state that such a configuration is old and well known in the art.

Claim Rejections - 35 USC § 112, 2nd paragraph

3. Claims 17, 19, 21, 22, 26 and 27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 26, line 9, "a conveying device" is vague and indefinite as to what structure is being set forth and as to what disclosed structure it refers, particularly since sufficient structure has not been set forth in the claims to perform the recited function. Further, it is not clear whether it is intended invoke 35 USC 112, 6th paragraph (applicant's attention is directed to the 25 July 2000 Official Gazette for "Supplemental Examination Guidelines for Determining the Applicability of 35 U.S.C. 112, para. 6"). Applicant's recitation does not include the "means for" language, so the functional language directed to the conveying device has been given little or no patentable weight; in line 10, "sufficiently less" is vague as to what constitutes "sufficiently".

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to

the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

"103" Rejections Based on Heywood

5. Claims 17-19 and 26, as understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Heywood in view of Williams.

Heywood discloses a device, particularly in Figures 1-4, with almost every structural limitation of the claimed invention including a cutting roll (F or G-G') with axially extending cross-cutting elements (e.g., "e") and radially extending longitudinal cutting elements (e.g., "c" or "d" or "I"), and a back-up roll (C) which is approximately parallel to the cutting roll. However, Heywood lacks a conveying device that is driven separately from the cutting roll. However, the Examiner takes Official notice that it is old and well known in the art to provide conveyors to move material from one work station (i.e., from storage, from a queue station, or from another processing apparatus) to another by independently driven conveyors to gain the benefits of automated operation (such as reduction of manpower) as well as the well known benefits of conveying devices such as efficient and continuous movement of material. For example, Williams discloses a conveying device (e.g., carrier belt 5) which is separately driven from the cutting device and is used to move the material onto another conveyor (e.g., carrier 3) for cutting thereof. As is well known in the art, these conveyors can be driven at any desired speed to provide a

desired spacing of the material during the material processing (i.e., the speed at which material moves from one apparatus to the next is often different than that of the material through any one of the apparatus). Therefore, it would have been obvious to one having ordinary skill in the art to provide separately-driven conveyors to feed material to or from the device of Heywood, for example, an infeed conveyor to move material onto the conveyor (e.g., L) of Heywood, for the well known benefits including those described above and further including those taught by Williams. Further, it would have been obvious to operate such an infeed conveyor at a speed higher than that of the conveyor and cutting roller of Heywood to decrease the spacing between the work pieces, or to operate such an infeed conveyor at a speed less that than of the conveyor and cutting roller of Heywood to increase the spacing between work pieces as is well known in the art.

Regarding claim 17, Heywood discloses flat cross cutters but lacks a disclosure that the cross cutters are formed of flat steel polished on one side. However, the Examiner takes Official notice that it is old and well known in the art to provide cutting blades made of polished steel to keep the blades free of contaminants and to provide a blade having a cleaner appearance. Therefore, it would have been obvious to one having ordinary skill in the art to make the blades, including the cross cutters, of Heywood of polished steel for the well known reasons including those described above.

6. Claims 21, 22 and 27, as understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Heywood as applied to claim 26 above, and further in view of Stream.

Heywood lacks the back-up roll being coated with plastic and further lacks depressions in the surface of the back-up roll. However, Heywood discloses that the back-up roll is covered with a soft material, specifically "rawhide or any other suitable material". Further, it is old and well known in the art to provide plastic on an anvil or back-up roll as evidenced by Stream to enable the blade to press through the workpiece with sufficient pressure to cut the workpiece while not dulling the cutting edge of the blade. Plastic coating is clearly a modern alternative to a rawhide coating, and the specific types of plastic set forth are common forms of plastic. Further, the plastic coating of Stream forms depressions to receive the cutting edges of the blades of the cutter roller and Stream teaches that this establishes a strong traction between the cutter roll and the back-up roll and further prevents wear of the backup roll. Therefore, it would have been obvious to one having ordinary skill in the art to replace the rawhide coating with plastic, particularly the notched coating of Stream, to gain the well known advantages of plastic including increased durability and reduced manufacturing costs as well as the advantages taught by Stream. Further, one having ordinary skill in the art would clearly select a common form of plastic for the well known benefits including availability.

"103" Rejections Based on Leeper et al.

7. Claims 17, 19 and 26, as understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Leeper et al. in view of Anetsberger.

Leeper et al. discloses a device with almost every structural limitation of the claimed invention including a cutting roll (e.g., 31) having at least one axially extending cross cutting element (e.g., 32) which includes a cutting edge and which is arranged parallel to a longitudinal axis of the cutting roll; a back-up roll (e.g., 72); and a conveying device (e.g., 12, 13) driven at a speed sufficiently less than the circumferential speed of the cutting roll (e.g., see col. 2, lines 61-67). Leeper et al. lacks a circumferentially extending cutting element. However, cutting rolls having both axially extending cross cutting elements and circumferentially extending cutting elements are old and well known in the art as evidenced by Anetsberger for longitudinally and laterally cutting a work piece to a desired size. Therefore, it would have been obvious to one having ordinary skill in the art to provide one or more circumferentially extending cutting elements on the cutting roll of Leeper et al. to further longitudinally divide the work piece as is well known in the art.

Regarding claim 17, Leeper et al. discloses flat cross cutters but lacks a disclosure that the cross cutters are formed of flat steel polished on one side. However, the Examiner takes Official notice that it is old and well known in the art to provide cutting blades made of polished steel to keep the blades free of contaminants and to provide a blade having a cleaner appearance. Therefore, it would have been obvious to one having ordinary skill in the art to make the blades,

including the cross cutters, of Leeper et al. of polished steel for the well known reasons including those described above.

8. Claims 21, 22 and 27, as understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Leeper et al. In view of Anetsberger as applied to claim 26 above, and further in view of Stream.

The combination lacks the back-up roll being coated with plastic and further lacks depressions in the surface of the back-up roll. However, the Examiner takes Official notice that it is old and well known in the art to provide plastic on an anvil or back-up roll as evidenced by Stream to enable the blade to press through the workpiece with sufficient pressure to cut the workpiece while not dulling the cutting edge of the blade. Plastic coating is clearly a modern coating for back-up rolls, and the specific types of plastic set forth are common forms of plastic. Further, the plastic coating of Stream forms depressions to receive the cutting edges of the blades of the cutter roller and Stream teaches that this establishes a strong traction between the cutter roll and the back-up roll and further prevents wear of the backup roll. Therefore, it would have been obvious to one having ordinary skill in the art to provide a plastic coating on the back-up roll of Leeper et al., particularly the notched coating of Stream, to gain the well known advantages of plastic including increased durability and reduced manufacturing costs as well as the advantages taught by Stream. Further, one having ordinary skill in the art would clearly select a common form of plastic for the well known benefits including availability.

Response to Arguments

9. Applicant's arguments filed November 7, 2000 in the Appeal Brief have been fully considered but they are not persuasive.

Regarding the "first issue" of the appeal, applicant appears to misunderstand the prior art rejection. In the paragraph bridging pages 4 and 5 of the appeal brief, applicant argues that "the Examiner's proposed modification is contrary to the teachings of Heywood and renders it unsatisfactory for its intended purpose, and so it is improper under 35 USC 103." Applicant continues in the second paragraph on page 5 of the appeal brief by stating that "[T]hose skilled in the art would not have been motivated to have driven the conveying device L separately from the cutting roll, regardless of the teachings of Williams, both because it would have increased the complexity of the device, and because the resulting alleged 'advantage' of being able to drive the conveying device at a speed different from that of the cutting roll would be undesirable in Heywood." The Examiner does not disagree with applicant's conclusion. However, applicant's arguments do not address the prior art as it has been applied. There is no suggestion in the prior art or by the Examiner to replace the conveying device L of Heywood. Rather, as stated by the Examiner in the previous prior art rejection and further clarified above, the rejection addresses providing an infeed conveyor in addition to and feeding material to the conveyor L of Heywood to move work pieces from any suitable source of supply as explicitly taught by Williams with regards to the conveyor or carrier belt 5. The conveyor or carrier belt 5 of Williams merely moves material from a supply source onto the conveyor 3 of the cutting device in a manner that

would be very much analogous to how an infeed or supply source conveyor would be added to the cutting device of Heywood. The Examiner maintains that operating such a supply or infeed conveyor at a speed slower than that of the cutting device, specifically the entire device of Heywood, is old and well known in the art for various known reasons including increasing the spacing between work pieces.

The Examiner's position regarding the "second issue" of the appeal remains the same as previously described.

Regarding the "third through fifth issues" of the appeal, the rejections based on Johnson et al. have been withdrawn and thus these issues are now moot.

Regarding the "sixth issue" of the appeal, this issue is not a matter for appeal since it is not directed to a rejection, but rather is directed to an objection to the drawings. Thus, this issue is a matter for petition. Further, applicant argues that "line 12 of page 11 describes 'notches' in the surface of the back-up roll to guide the edges of the cutting elements" and further states that "[P]roposed figure 5 shows nothing more than this." The Examiner respectfully disagrees. First, proposed figure 5 does not show a surface with notches, but rather shows a completely jagged surface. For example, Figure 5 of Stream shows a surface with notches therein. Second, applicant has not stated that a cutting roll device with such a jagged surface configuration is old and well known in the art. Therefore, there appears to be no basis in the originally filed disclosure to support what is shown in proposed Figure 5.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Clark Dexter whose telephone number is (703) 308-1404.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Rinaldi Rada, can be reached at (703)308-2187.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703)308-1148. The fax numbers for this group are: formal papers - (703)305-3579; informal/draft papers - (703)305-9835.

Clark F. Dexter
Primary Examiner
Art Unit 3724

cfd
January 10, 2001